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K&L Gates LLP P.O. Box 1135 Chicago, IL 60690-1135			PATTERSON, MARC A	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SHERWIN SHANG, LECON WOO, TAHUA
YANG, MICHAEL T.K. LING and CRAIG SANDFORD

Appeal 2009-003158
Application 10/688,843
Technology Center 1700

Decided:¹ July 7, 2009

Before CHUNG K. PAK, TERRY J. OWENS, and
JEFFREY T. SMITH *Administrative Patent Judges*.

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-17. Claims 18-39, which are all of the other pending claims, stand withdrawn from consideration by the Examiner. We have jurisdiction under 35 U.S.C. § 6(b).

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

The Invention

The Appellants claim a crosslink free monolayer film. Claim 1 is illustrative:

1. A cross-link free monolayer film comprising:
a polymer blend of a first component selected from the group consisting of 1) ethylene and α -olefin interpolymers having a density of less than about 0.915 g/cc, (2) ethylene and lower alkyl acrylate interpolymers, (3) ethylene and lower alkyl substituted alkyl acrylate interpolymers and (4) ionomers, the first component present in an amount by weight of the film from about 10% to about 50%, the first component having a first melting point temperature determined by DSC, a second component selected from the group consisting of propylene containing polymers and methyl pentene containing polymers, the second component being present in an amount by weight of the film from about 50% to about 90%, the second component having a second melting point temperature determined by DSC; and the film being capable of withstanding steam sterilization at a temperature from about 100°C to about 130°C.

The References

Hamilton	5,397,842	Mar. 14, 1995
Cahill	6,346,308 B1	Feb. 12, 2002
Shang	2002/0115795 A1	Aug. 22, 2002

The Rejections

The claims stand rejected as follows: claims 1-6 and 12-17 under 35 U.S.C. § 102(b) over Shang; claims 7 and 8 under 35 U.S.C. § 103 over Shang in view of Hamilton; and claims 9-11 under 35 U.S.C. § 103 over Shang in view of Cahill.

OPINION

We affirm the Examiner's rejections.

*Rejection of claims 1-6 and 12-17 under
35 U.S.C. § 102(b) over Shang*

Issue

Have the Appellants shown reversible error in the Examiner's determination that Shang discloses, expressly or inherently, a cross-link free film?

Findings of Fact

Shang discloses a monolayer film made from a polymer blend having a first component of a polymeric material capable of being crosslinked and a second component of a non-readily crosslinkable polymeric material (¶¶ 0024, 0085). The blend is extruded using an extrusion die to produce a monolayer film which is exposed to radiation to cross-link the first component but not the second component" (¶ 0068, 0085).

Analysis

"Anticipation requires that every limitation of the claim in issue be disclosed, either expressly or under principles of inherency, in a single prior art reference." *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1255-56 (Fed. Cir. 1989).

The Examiner argues that Shang's monolayer film, prior to crosslinking, is entirely crosslink free (Ans. 10).

The Appellants argue (Reply Br. 3):

"[T]he extruded blend described in *Shang* is an intermediate form and does not comprise a final, finished product in accordance with the claimed invention. For example, this intermediate form is never used as a finished film or used to produce a container in any embodiments or examples in *Shang*.

There is also no indication that there is any discernable or significant amount of time lapse between when the blend is extruded

and when the blend becomes irradiated (i.e. cross-linked). In fact, it can be argued that the blend is irradiated immediately after it is extruded thereby resulting in a partially cross-linked film.

The Appellants' claims merely require a crosslink free monolayer film, not a container or any other finished form of product that excludes an intermediate crosslink free film. Shang's disclosure is not limited to irradiation immediately after film formation. Regardless, even if Shang's crosslink free monolayer film is crosslinked immediately after it is extruded, during the time before irradiation the monolayer film is crosslink free and, therefore, corresponds to the Appellants' claimed film. Appellants have not directed us to evidence that the extruded blend of Shang is immediately irradiated after extrusion.

Conclusion of Law

The Appellants have not shown reversible error in the Examiner's determination that Shang discloses, expressly or inherently, a cross-link free film.

*Rejections of claims 7 and 8 under 35 U.S.C. § 103 over
Shang in view of Hamilton; and claims 9-11 under
35 U.S.C. § 103 over Shang in view of Cahill*

The Appellants do not provide a substantive argument as to the separate patentability of claims 7-11 but, rather, argue that Hamilton and Cahill do not remedy the deficiency in Shang as to claim 1 (Br. 13-14; Reply Br. 4-5). As pointed out above regarding the rejection of claim 1, that deficiency does not exist. According, we are not persuaded of reversible error in the rejections under 35 U.S.C. § 103 of claims 7 and 8 over Shang in view of Hamilton and claims 9-11 over Shang in view of Cahill.

DECISION/ORDER

The rejections of claims 1-6 and 12-17 under 35 U.S.C. § 102(b) over Shang, claims 7 and 8 under 35 U.S.C. § 103 over Shang in view of Hamilton, and claims 9-11 under 35 U.S.C. § 103 over Shang in view of Cahill are affirmed.

It is ordered that the Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

tc

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